

**Christine Cusack**

**From:** Robert G. Clyne [RClyne@hillrivkins.com]  
**Sent:** Wednesday, June 08, 2005 10:15 AM  
**To:** Jeff Asperger; Whitman, M. Hamilton Jr.; Christine Cusack  
**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com; bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; berniesevel@aol.com; jskeen@skaufflaw.com; clyon@semmes.com; Daile Grigaitis; James A. Saville  
**Subject:** RE: Tate & Lyle: remaining discovery

Jeff,

Unless I missed something, the magistrate denied your motion for sanctions. You have already written to the court about the subject of further discovery and we responded. I believe that the motions for summary judgment are in the hands of Judge Legg.

Regarding your "wire rope expert", you previously indicated that he was a rebuttal witness. If you are now suggesting that he may testify at trial as a rule 26 (a)(2) expert, then you are long overdue in providing an expert report and tendering him for deposition pursuant to the court's Feb. 20 2004 order and we will resist any such belated designation. Even as a rebuttal witness a report is required pursuant to rule 26 (a)(2)(C). Regardless of the Heiner Popp deposition, this is your affirmative obligation failing which this expert testimony will be precluded by the court.

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-----Original Message-----

**From:** Jeff Asperger [mailto:jasperger@asplaw.net]  
**Sent:** Tuesday, June 07, 2005 6:24 PM  
**To:** Robert G. Clyne; Whitman, M. Hamilton Jr.; Christine Cusack  
**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com; bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; berniesevel@aol.com; jskeen@skaufflaw.com; clyon@semmes.com; Daile Grigaitis; James A. Saville  
**Subject:** RE: Tate & Lyle: remaining discovery

Bob,

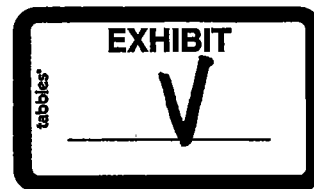
That is our agreement. If we don't have a ruling on this issue soon, I would propose that we provide a letter status update to the magistrate so that we can have some closure on this issue. Of course, please let us know if you folks decide that you have no interest in taking our wire rope expert's depo. We can then ask the magistrate to proceed on the pending motions, including our motion for sanctions. I know we all wish to get this matter moving, but we will not make any nonrefundable flight bookings until the matter is resolved. I will prepare a letter for the magistrate which I will forward to both of you for your approval.

Jeff

-----Original Message-----

**From:** Robert G. Clyne [mailto:RClyne@hillrivkins.com]  
**Sent:** Tuesday, June 07, 2005 5:03 PM  
**To:** Whitman, M. Hamilton Jr.; Christine Cusack; Jeff Asperger  
**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com; bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; berniesevel@aol.com; jskeen@skaufflaw.com; clyon@semmes.com; Daile Grigaitis; James A. Saville  
**Subject:** RE: Tate & Lyle: remaining discovery

I will get back to you as well but we need to be perfectly clear on one issue. As per our understanding with Jeff, there will be no depositions without a court order authorizing same. Therefore, please do not tell us later on that witnesses have unrefundable flights and, thus, the depositions must go forward. No court order - no depositions. Consider yourselves on notice. Thank you.



6/13/2005

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-----Original Message-----

**From:** Whitman, M. Hamilton Jr. [mailto:mhwhitman@ober.com]

**Sent:** Tuesday, June 07, 2005 5:58 PM

**To:** Christine Cusack; Jeff Asperger; Robert G. Clyne

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bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; berniesevel@aol.com;  
jskeen@skauflaw.com; clyon@semmes.com; Daile Grigaitis; James A. Saville

**Subject:** RE: Tate & Lyle: remaining discovery

Christine:

I will be away from the office the remainder of this week but will get back to you.

Tony Whitman

**M. Hamilton Whitman, Jr.**  
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**From:** Christine Cusack [mailto:ccusack@asplaw.net]

**Sent:** Friday, June 03, 2005 10:26 AM

**To:** Whitman, M. Hamilton Jr.; Jeff Asperger; Robert G. Clyne

**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com;  
bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; berniesevel@aol.com;  
jskeen@skauflaw.com; clyon@semmes.com; Christine Cusack; Daile Grigaitis; James A. Saville

**Subject:** RE: Tate & Lyle: remaining discovery

All,

Mike Parnell does not have any available dates in July for his deposition as he is already committed to work on 4 different projects during the month. He has availability as follows:

August 1 - 5

August 8 - 12

August 15 - 19

August 29 - September 2

Please let me know your availability on these dates. Please also advise if you still wish to produce Captain Popp for deposition in July or if you would prefer to schedule him during August when Mike Parnell is scheduled.

Thank you,

Christine Cusack

6/13/2005

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-----Original Message-----

**From:** Whitman, M. Hamilton Jr. [mailto:mhwhitman@ober.com]

**Sent:** Tuesday, May 03, 2005 3:11 PM

**To:** Jeff Asperger; Robert G. Clyne

**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com; bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; berniesevel@aol.com; jskeen@skauflaw.com; clyon@semmes.com; Christine Cusack; Daile Grigaitis; James A. Saville

**Subject:** RE: Tate & Lyle: remaining discovery

Jeff, Bob and all:

I would be happy to block dates in July, on the express understanding that we are not agreeing to discovery absent direction from the court. I have a three week arbitration beginning June 6, with depositions out of town and out of the country still to accomplish, along with all other hearing preparations, in the weeks between now and the hearing. I will also need to provide lead time to Heiner Popp, as he is retired and living in Colorado. Can we all hold July 5, 6 & 7 or July 13, 14 & 15?

Jeff, we need to have a report from Mr. Parnell.

I suggest a conference call Monday or Tuesday of next week.

Tony

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**From:** Jeff Asperger [mailto:jasperger@asplaw.net]

**Sent:** Tuesday, May 03, 2005 3:01 PM

**To:** 'Robert G. Clyne'; Jeff Asperger; Whitman, M. Hamilton Jr.

**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com;

6/13/2005

bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com; berniesevel@aol.com; jskeen@skaufflaw.com; clyon@semmes.com; Christine Cusack; Daile Grigaitis; James A. Saville

**Subject:** RE: Tate & Lyle: remaining discovery

So what. If the court grants any extension, which it has indicated it intends to do, we will not have to scramble to complete the depositions if we have dates set aside. If no extension is given, we simply do not proceed with the depositions. There are lots of schedules to coordinate with summer vacations and such. Has this come to the point where we cannot agree to cooperate to get discovery done? Your choice.

-----Original Message-----

**From:** Robert G. Clyne [mailto:RClyne@hillrivkins.com]

**Sent:** Tuesday, May 03, 2005 12:51 PM

**To:** Jeff Asperger; Whitman, M. Hamilton Jr.

**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com; jbartlett@semmes.com;

bcole@semmes.com; agiles@semmes.com; FJGorman@GandWlaw.com;

berniesevel@aol.com; jskeen@skaufflaw.com; clyon@semmes.com; Christine Cusack; Daile Grigaitis; James A. Saville

**Subject:** RE: Tate & Lyle: remaining discovery

There was no agreed order.

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-----Original Message-----

**From:** Jeff Asperger [mailto:jasperger@asplaw.net]

**Sent:** Tuesday, May 03, 2005 1:50 PM

**To:** 'Whitman, M. Hamilton Jr.'; Robert G. Clyne; Jeff Asperger

**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com;

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clyon@semmes.com; Christine Cusack; Daile Grigaitis; James A. Saville

**Subject:** RE: Tate & Lyle: remaining discovery

I am presuming that the court will enter the agreed order as requested, and I don't believe we should wait to schedule this discovery given how busy we all are. Tony, you indicated you have a difficult schedule. So do I. Is there a problem with talking about dates now? Thanks.

Jeff

-----Original Message-----

**From:** Whitman, M. Hamilton Jr. [mailto:mhwhitman@ober.com]

**Sent:** Tuesday, May 03, 2005 10:59 AM

**To:** Robert G. Clyne; Jeff Asperger

**Cc:** wcbailey@simmsshowers.com; bbrunk@gulfattorneys.com;

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**Subject:** RE: Tate & Lyle: remaining discovery

Nor have I.

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**From:** Robert G. Clyne [mailto:RClyne@hillrivkins.com]  
**Sent:** Tuesday, May 03, 2005 11:51 AM  
**To:** Jeff Asperger; Whitman, M. Hamilton Jr.  
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FJGorman@GandWlaw.com; berniesevel@aol.com; jskeen@skaufflaw.com;  
clyon@semmes.com; Christine Cusack; Daile Grigaitis; James A. Saville  
**Subject:** RE: Tate & Lyle: remaining discovery

What time limits are we talking about that have been set by the court? I have not seen an order.

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-----Original Message-----

**From:** Jeff Asperger [mailto:jasperger@asplaw.net]  
**Sent:** Monday, May 02, 2005 8:47 PM  
**To:** 'Whitman, M. Hamilton Jr.'  
**Cc:** Robert G. Clyne; 'wcbailey@simsshower.com';  
'bbrunk@gulfattorneys.com'; 'jbartlett@semmes.com'; 'bcole@semmes.com';  
'agiles@semmes.com'; 'FJGorman@GandWlaw.com'; 'berniesevel@aol.com';  
'jskeen@skaufflaw.com'; 'clyon@semmes.com'; Christine Cusack; Daile  
Grigaitis; James A. Saville  
**Subject:** Tate & Lyle: remaining discovery

Tony and folks,

I propose the week of June 13 for the depo of Heiner Popp and our wire rope expert, Mike Parnell. The latter part of the week would work best. Please advise so that we can complete this discovery within the time limits set by the court. I will check dates with Mr. Parnell and follow up if you would advise of the availability of Capt. Popp. Thanks.

Jeff

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6/13/2005

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